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ABSTRACT

One response to the large and rapidly growing number of legal cases with which nonlawyer researchers must deal is computerized legal data retrieval technology. LEXIS, an example of such technology, improves upon traditional research tools in two ways: it increases the speed with which researchers may discover relevant documents and, through its full-text Key Word in Context (KWIC) approach, it frees researchers from preestablished legal index headings and enables them to formulate unique search requests. The LEXIS system currently consists of several "libraries," including all United States Supreme Court cases dating from 1938 (eventually all Supreme Court cases will be stored). Like other computerized data retrieval systems, LEXIS functions on a combination of features such as connectors and limitors, and it requires carefully phrased search requests to be most effective. While computer time appears to be expensive, the amount of material generated in a short time makes it relatively economical. In brief, LEXIS provides nonlawyer researchers with a speedy, reliable, and relatively inexpensive tool with which to complete their tasks. (FL)

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LEXIS: APPLICATIONS FOR RESEARCH IN COMMUNICATION & LAW

A Paper Presented at the 1979 Convention of the
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LEXIS: APPLICATIONS FOR RESEARCH IN COMMUNICATION AND LAW

The interest of communication scholars in jural phenomena is a matter of historic record. Aristotle's tripartite classification of rhetoric into judicial, deliberative and epideictic genres has long provided warrant for communication inquiry into great legal speeches,¹ great trials,² and the work of great jurists.³ Among our more significant theorists of the "New Rhetoric" is Chaim Perelman, the Belgian philosopher whose perspective on the very nature of rhetoric itself flows from a jurisprudential analogy.⁴ And our recent professional conventions have devoted increasing amounts of space for programs exploring various dimensions of communication and law.⁵ But even though communication specialists are turning with greater frequency to legal data, they are almost never trained in legal research methods, and rarely do they have the opportunity to obtain such expertise. While in no way intended to denigrate the necessity of knowledge in legal research methods of the traditional kind, this paper discusses the potential of recent advances in computerized legal data retrieval systems, specifically LEXIS, as they may bear fruit for the non-lawyer asking questions of legal data.

Law finding aids are designed to facilitate the work of the legal community and to that end they do an admirable job. But frequently the social scientist or humanist approaches legal archives with non-legal questions of foremost importance and his or her research may not be served as efficiently as that of a colleague from the bench or bar.⁶ Legal indices and finding aids are organized around topic headings which direct the researcher to points of law, and if the researcher's

interest were only tangentially legal, the work, until recently, was difficult.

Other than the limitation of the topical system in legal archives, the researcher approaching the law library faces a profusion of documents virtually unparalleled in other areas of inquiry. Morris Cohen, Professor of law and law librarian at Harvard, reported that there are currently about three million cases on record in Anglo-American jurisprudence and the number grows at the rate of around thirty-thousand a year.⁷ Describing this situation, Cohen, points out that "traditional legal research techniques are rapidly proving inadequate to permit access to [such] vast, continually expanding reservoirs of information."⁸ One response to this large and rapidly growing expanse of cases has been computerized legal data retrieval technology.⁹

An example of such technology, developed by the Mead Corporation of Dayton, Ohio, is called LEXIS and it improves upon traditional legal research tools in two basic ways. The first is the speed with which a researcher may discover the range of relevant documents. Where traditional law finders would require a seasoned researcher to spend days in the law library, the LEXIS system searches a body of data and prints out citations to the relevant materials in minutes. The second advantage of LEXIS over traditional law finders accrues particularly to the social scientist or humanist who has nonlegal inquiries in mind that are likely not of interest to the juristic researcher pursuing strictly legal questions.

This advantage is explained in the LEXIS desk book as it discusses the central principle of the system, which is, "the determination by

the researcher of words, phrases, and numbers, and combinations of these, which are likely to occur in cases or statutory material which may be useful to the researcher."¹⁰ This Key Word in Context (KWIC) principle frees the researcher from pre-established legal index headings and enables him to formulate search requests limited only by his imagination and resources. The KWIC approach is advantageous to traditional research methods, particularly for its suitability to the prose style of Supreme Court opinions. Justices frequently play the role of social or moral philosopher as much as that of jurist and their rhetoric thus ranges over a broad array of topics, many of which (the obiter dicta) are not directly relevant to the issue at hand. Traditional citators and indices cannot be relied upon for accurate or complete retrieval of such obscure or tangential remarks, even though they may be of primary interest to the non-lawyer researcher. But with the assistance of the KWIC feature of LEXIS, a researcher can specify any word or phrase of interest and the computer will retrieve all documents in which it appears, regardless of whether it holds central importance to the case.

The KWIC ability of LEXIS rests on its "full-text" approach to data storage in which "the full, natural text of an appropriate set of documents. . . is stored character by character, precisely as published, in a computer's memory bank."¹¹ As of August, 1978, the LEXIS system consisted of several "libraries"¹² including all United States Supreme Court cases dating back to January 1, 1938. This limitation poses a particular problem for First Amendment researchers since their area of interest initially reached the Court twenty years before that date with Schenck case¹³ in which the "clear and present

danger" doctrine was first articulated by Justice Holmes. However, programmers are loading LEXIS' memory banks at both ends and eventually all Supreme Court cases will be stored.

As with traditional research methods, intuition, basic skills, and practice are necessary for successful computer-assisted legal data retrieval. With LEXIS, this means carefully phrased search requests. Complete instructions and options for phrasing search requests are quite lengthy and can be found in the LEXIS Desk Book,¹⁴ so I will provide only a few examples.

Like other computerized data retrieval systems (such as ERIC), LEXIS functions on a combination of features such as KWIC, various connectors, and limitors. The KWIC feature allows the computer to retrieve any case in which the specified words or phrases appear; the connectors, such as OR, AND, W/N (Within N words of the specified word), AND NOT, and BUT NOT, serve to broaden a search request according to the needs of the researcher. The limitors, such as DATE and SEG (a specified segment of the opinion such as OPINION, DISSENT, HEADNOTES, CITATION, etc.) serve to restrict the request to conform to the researcher's needs. The DATE limitor restricts the request to a period before a given date, after a given date, or between two dates. The W/SEG limitor restricts the search to NAME (the popular name of the case, e.g., Miller v. California), CITE (the citation of the case, e.g., 413 U.S. 15), DISSENT (only the dissenting opinions), OPINION (only the majority opinions, OPINIONBY (only the opinion of a specified member of the dissent), and so forth.

One search request formulated for another study¹⁵ illustrates how the descriptors work. The intent of the request was to have the

computer retrieve the names and citations for cases in which William O. Douglas authored opinions on the issues of obscenity and pornography. The search request asked for all cases conforming to "DISSENTBY (Douglas) or OPINIONBY (Douglas) and prurient or obscene, or lewd or licentious or obscenity or pornography." The yield was fifty cases and this yield illustrates another possible drawback of the LEXIS system: it is often overly sensitive to manifest content. After carefully reading all retrieved cases, only twenty-four were judged relevant to the study. Several factors combined in the decision of relevance or irrelevance. Some cases were discarded because the primary issue at the Supreme Court level focused upon aspects of the litigation other than the allegedly pornographic material itself, even though such material was of central concern at the lower court level. Such cases frequently came to the Supreme Court on procedural grounds and consequently Douglas found it unnecessary to discuss obscenity and pornography per se. But since the headnotes, footnotes, or quotations from the lower court record frequently contained the key search words, LEXIS retrieved them. Since the study examined only the use of relevant terms by Douglas himself, only those cases in which the specified terms occurred in his own words were deemed relevant to the study.

Although LEXIS can seem at times too sensitive to manifest content, that very characteristic may yield invaluable results. An example of such a result is a case retrieved by LEXIS for the previously mentioned study. The case, Dennis v. United States, which had nothing at all to do with obscenity or pornography, sustained the lower court rulings on a group of defendants convicted under the Smith Act. But Mr.

Justice Douglas indulged in a one-sentence dictum in his Dennis dissent in which he remarked that obscenity, along with certain seditious teaching, "should be beyond the pale"¹⁶ of first amendment protection. Traditional legal research aids would have overlooked such a statement, since it was irrelevant to the central issues in the instant case. However, if one were interested in the evolution of Douglas' thinking on the issues of obscenity and pornography, as I was, then such an aside would be of signal importance to the research, and it would have been lost.

A few examples will illustrate potential uses of the LEXIS system for social scientists. Suppose the researcher is interested in the problem of access to mass media. Several judiciously phrased search requests, directed to the General Federal Library, file Supreme Court, Court of Appeals, or District Courts, might read:

"ACCESS W/10 MASS MEDIA OR BROADCAST MEDIA OR TELECOMMUNICATIONS."

A slightly different inquiry might request all cases conforming to:

"ACCESS W/10 MASS MEDIA OR BORADCAST MEDIA OR TELECOMMUNICATIONS
W/SEG FIRST AMENDMENT OR FREEDOM OF SPEECH OR FREEDOM OF PRESS
OR FREEDOM OF EXPRESSION."

The inclusion by the researcher of the key words CABLE or CABLEVISION would probably yield a substantively different body of documents.

Through these or similar requests, the researcher could generate a reliably comprehensive table of cases in the area of access to mass media. The request could be further honed by placing date limitors in the phrasing, thus restricting the search to any period of time before or after a given date, or between two dates.

Suppose the researcher is curious to know the extent to which the Communications Act of 1978 has generated litigation in the federal courts. Again referring to one or more of the three files in the General Federal Library, the broadest and least restricted search would simply ask the computer to supply cites for any cases in which the name or number of the statute appeared in any segment of the case. A finer cut might ask for:

"COMMUNICATION ACT OF 1978 W/10 OWNERSHIP AND FIRST AMENDMENT"

Such a search would yield all cases in which the ownership provisions of the act were closely related to freedom of speech and press issues.

The LEXIS system, like most computers, is not particularly bright-- it depends upon the ingenuity and imagination of the researcher. However, once a properly and judiciously phrased search request is typed in, it responds with incredible speed and reliability. The table of cases for my dissertation, three-hundred and one first amendment opinions by Justice William O. Douglas, was generated in a little over seventeen seconds. So far I know of no omissions, although quite a bit of retrieval overkill did occur. But to expect a computer to make substantive judgments of the relevance or intrinsic significance of data is to misunderstand their place in research.

At this writing the Mead Corporation declined to identify the location of LEXIS terminals in east coast law schools. Further, most contracts negotiated between the company and the subscriber restrict access to the system to the faculty and students of that institution. That, however, should prove small obstacle to the academic researcher. For example, although my own school, North Carolina State University,

has no law school and thus no terminal, through our interlibrary agreements I can access the Duke University terminal. Cost, of course, is a matter to be worked out on an individual basis. Shifting internal computer monies from one line to another is one solution, external grants is another, while faculty research and development grants provide a third source of funds. What should be stressed is the relative economy of doing research this way. One trip to a LEXIS terminal in the early spring of 1976 by the authors¹⁷ and two other graduate students has thus far yielded one dissertation, several publications, and a half dozen convention papers or so. We still have more than a dozen printouts we have not even begun to work on, and the cost was one day's time and less than \$250 in computer costs. With traditional finding aids, we would still be in the stacks. In short, LEXIS provides the non-lawyer researcher with a speedy, reliable, and relatively inexpensive tool with which to crack the forbidding body of documents that is a modern law library.

¹e.g., Jimmie N. Rogers, "John Adams Summation Speech in *Rex v. Wemms, Et. Al.: A Delicate Act of Persuasion*," Southern Speech Communication Journal 39 (Winter, 1973), pp. 134-144.

²e.g., Milton Dickens and Ruth E. Schwartz, "Oral Argument Before the Supreme Court: *Marshall v. Davis* in the School Segregation Cases," Quarterly Journal of Speech 57 (February, 1971), pp. 32-34.

³e.g., Raymond S. Rodgers, "William O. Douglas on the First Amendment: Rhetorical Genres in Judicial Opinion," Unpublished Ph.D. Dissertation, University of Oklahoma, 1979 (in progress). See also Malthon M. Anapol, "The Role of Rhetoric in the Judicial Opinion: The Rhetoric of Boaventura De Sousa Santos," Paper delivered at the 64th Annual Speech Communication Association Convention, Minneapolis, MN, November 1-4, 1978.

⁴e.g., Ch. Perelman and L. Olbrechts-Tyteca, *The New Rhetoric*, trans. John Wilkinson and Purcell Weaver (Notre Dame, Ind.: University of Notre Dame Press, 1969); Perelman, *The Idea of Justice and the Problem of Argument*, trans. John Petrie (New York: Humanities Press, 1963).

⁵The 1978 SCA convention had at least six programs predominately or exclusively devoted to questions of communication and law or freedom of speech; the 1979 SSCA convention had five; and the 1979 ESCA convention had three.

⁶See Morris Cohen, *Legal Research in a Nutshell* (St. Paul, MN: West Publishing Company, 1971) for a summary of the strengths and weaknesses of conventional legal research aids.

⁷*Ibid.*, p. 40.

⁸*Ibid.*

⁹For a discussion of various computerized legal data retrieval systems other than LEXIS, see Francis H. Musselman, "Computers: A Boon to Legal Research," Legal Economics (Winter, 1976), pp. 7-8, 11-12, 33.

¹⁰LEXIS: A Primer (Dayton: Mead Data Central, 1975), p. 1.

¹¹Legal Research and the Computer (Dayton: Mead Data Central), p. 4.

¹²The libraries consist of two broad categories: Federal Materials and State Materials. The Federal libraries consist of (1) General Federal which includes Supreme Court, Courts of Appeals, and District Court materials, loaded to various dates; (2) Securities Law including materials from U.S.C., Title 15, S.E.C. Rules and Regulations, Federal Reserve Board Regulations, and Legislative Histories; (3) Tax Law, including the I.R.S. Code, Tax Court Decisions, and other materials; and (4) Trade Regulation Law, including Federal Court Decisions and F.T.C. Decisions. The State Libraries consist of various materials

from New York, Ohio, Missouri, Texas, Illinois, Kansas, Pennsylvania, California, Delaware, and Massachusetts.

¹³Schenck v. United States 249 U.S. 47 (1919).

¹⁴LEXIS: A Primer, pp. 3-14. The actual desk book is available only to subscribers to the system (costs range between \$6,000 and \$36,000 annually), but this shorthand version adequately explains the procedures for formulating most search requests.

¹⁵Raymond S. Rodgers, "'Congress Shall Make No Law. . .': A Computer-Assisted Content Analysis of the Decisions of Justice William O. Douglas on the Issues of Obscenity and Pornography," Free Speech Yearbook, 1977, pp. 91-101.

¹⁶341 U.S. at 681.

¹⁷Dr. Barefield is the director of Mr. Rodgers' dissertation, and directed the initial LEXIS search requests.